

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-1019

APRIL 4, 2007

PAMELA OLIVAS

APPELLANT

APPEAL FROM THE CLEBURNE
COUNTY CIRCUIT COURT
[NO. JV 2004-20/21]

V.

ARKANSAS DEPARTMENT OF
HEALTH and HUMAN SERVICES

APPELLEE

HON. STEPHEN CHOATE,
JUDGE

AFFIRMED

Appellant Pamela Olivas appeals the order of the Cleburne County Circuit Court terminating her parental rights with respect to one of her minor sons. Appellant's sole point on appeal is a challenge to the sufficiency of the evidence supporting the order of termination of parental rights. We find no error and affirm.

Appellant is the mother of D.R., a son, born June 11, 1997, and of A.O., a son and D.R.'s half-brother. This case began when appellee Arkansas Department of Health and Human Services (DHHS) took a seventy-two hour hold on both boys. On January 23, 2004, DHHS filed a petition for emergency custody based on a positive drug test taken by appellant. On January 27, 2004, a hearing was held, and it was determined that probable

cause existed to find that the juveniles were dependent-neglected. At the adjudication hearing held on February 10, 2004, the parties agreed that the juveniles were dependent-neglected based on educational neglect. At that point, DHHS began working with appellant and Stephen Olivas, the father of A.O., to facilitate reunification; however, custody of D.R. remained with DHHS.

Review hearings were held on March 15, 2004, July 21, 2004, December 15, 2004,¹ February 14, 2005, May 9, 2005, and October 17, 2005. At the March 2004 and July 2004 hearings, appellant was found to have complied with the case plan except for finding employment. At the December 2004 hearing, evidence was presented that she had made progress regarding the case plan, likewise in February 2005. At the May 2005 review hearing, she was found to be in compliance but for failing to attend counseling. During the October 2005 review hearing, at which appellant was not in attendance, it was determined that she was not in compliance, and the goal was changed from reunification with appellant to termination of her parental rights with a goal of adoption.

Appellant's mother, Deloris Lenz, filed a motion to intervene and petition for appointment of guardianship upon learning of the plans to terminate appellant's parental rights. The case was set for review on December 14, 2005, but was continued to February 8, 2006, in order to allow Mrs. Lenz and her husband to obtain psychological and medical

¹Stephen Olivas was granted permanent custody of A.O. on December 15, 2004, and accordingly, was dismissed from this matter.

evaluations and for a home study to be conducted on their home. Appellant failed to attend the hearing on February 8, 2006, but she did sign a consent that would allow Mrs. Lenz guardianship of D.R. DHHS never consented to the guardianship and was opposed to it. The home study was not complete, and the circuit court continued the hearing to March 6, 2006.

On March 6, 2006, the circuit court heard the petition for guardianship, and, after hearing extensive testimony, the circuit court took the matter under advisement. The petition was denied, as was the motion to intervene, in an order entered on April 13, 2006. The termination hearing was held on May 9, 2006, and the circuit court entered an order terminating appellant's parental rights on May 23, 2006, finding that it would be detrimental to D.R.'s health and well-being to be returned to the custody of his mother or to seek alternate permanency and accepting the testimony of the adoption specialist that it was likely that D.R. would be adopted. Appellant filed a timely notice of appeal on June 20, 2006.

In cases involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Camarillo-Cox v. Ark., Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, ___ S.W.3d ___ (2006). This is because termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. *Camarillo-Cox, supra*. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the

child. *Id.* Thus, parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. *Id.*

Arkansas Code Annotated § 9-27-341(b)(3) (Supp. 2005) requires that an order terminating parental rights be based upon clear and convincing evidence. *See also Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. *Id.* It is well settled that when the burden of proving a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the circuit court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *Id.* In making this determination, we review the case de novo, but we give a high degree of deference to the circuit court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Arkansas Code Annotated section 9-27-341(b)(3)(A) requires that an order forever terminating parental rights be based upon a finding by clear and convincing evidence that it is in the best interest of the juvenile, including *consideration* of (1) the likelihood that the juvenile will be adopted if the termination petition is granted, and (2) the potential harm, specifically addressing the effect on the health and safety of the child, caused by returning

the child to the custody of the parent. Additionally, one of the grounds listed in Arkansas Code Annotated section 9-27-341(b)(3)(B) must be proven by clear and convincing evidence. The circuit court in this case made findings on grounds (i)(a), (ii)(a), (vii)(a), and (ix)(3)(i), which state:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

* * * *

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

* * * *

(vii)(a) That other factors or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

* * * *

(ix)(a) The parent is found by a court of competent jurisdiction, including the juvenile division of circuit court, to:

* * * *

(3) Have subjected any juvenile to aggravated circumstances [meaning: A juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification].

See Ark. Code Ann. § 9-27-341(b)(3)(B).

Appellant initially argues that the circuit court erred in finding that DHHS had met its burden of proof regarding the first prong, that it was in D.R.'s best interest to terminate her parental rights. She claims that D.R. is not adoptable based upon his multiple therapeutic foster-care placements while in DHHS's custody and his anger and behavioral issues. Appellant contends that the circuit court's reliance on the testimony of adoption specialist Ainsley Brown, that D.R. would likely be adopted, was counter to the evidence. Additionally, she points out the circuit court noted that D.R. had "deep seeded problems" and acknowledged the testimony of primary case worker Susan Morrow, who indicated the difficulty in finding an adoption placement based on his age and disabilities. Secondly, appellant questions the evidence related to the second prong of the best-interest analysis, or what harm D.R. might encounter if returned to her custody. She admits that her drug usage was the initial concern in the case, subsequently exacerbated by her absence at various review hearings. Still and yet, she maintains that she loves her son and received extended visitation with him until she refused to take a drug test. She argues that her actions were not so extreme as to show that there would be any detriment to D.R.'s health, safety, and well-being if returned to her custody.

Finally, appellant claims that there existed a less drastic measure to remedy the situation, placing D.R. with his grandparents pursuant to Ark. Code Ann. § 9-27-338(a)(4). She references D.R.'s testimony at the March 6, 2006, hearing related to his grandparents and extended family, about how he had been devastated at the possible outcome of adoption and

his understanding that it would cut off all ties to his family until he reached the age of eighteen. She contends that disenfranchising D.R. from his extended family will be detrimental and add to his extensive existing psychological problems. Appellant asserts that her mother and stepfather wanted guardianship of D.R. in order to provide the much needed stability, and that they went through significant steps with the circuit court to try achieve that goal. Appellant argues that permanent relative placement with the Lenzes was the appropriate least-restrictive alternative to terminating her parental rights, and that the circuit court erred in not implementing that alternative.

Appellant fails to challenge each separate ground relied upon by the circuit court in support of termination. *See Benedict v. Ark. Dep't of Human Servs.*, __ Ark. App. __, __ S.W.3d __ (Nov. 1, 2006); *Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005). Specifically, she does not challenge the findings that she failed to provide material support and that she manifested an indifference to remedying her conditions. DHHS was required to prove only a single ground, and appellant should have addressed each individually as they are addressed by different case law. Not only did she fail to address each ground separately, she completely failed to contest some of the circuit court's findings.

DHHS discounts appellant's contentions, reminding this court that the circuit court was only required to consider the likelihood that D.R. would be adopted and the potential for harm if he were returned to appellant. The circuit court was not required to make specific written findings as to those factors, and other factors could be considered in making the

determination. *See McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Additionally, appellant failed to adequately support her comment, that the multiple foster placements rendered D.R. unable to be adopted, with either case law or citations to the record.

There is evidence in the record to support the circuit court's finding that D.R. had been out of her custody for at least twelve months, pursuant to the requirements of Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(a). At the time of the termination hearing, he had been in DHHS custody for two years and three months, and appellant's visitation does not negate that fact. Furthermore, the potential for harm was evident from the extensive testimony presented to the circuit court throughout the case. Appellant's testimony indicates that she never did understand why D.R. was placed in foster care in the first place. She never remedied the situation that caused the initial removal, including her failure to secure and maintain employment, attend therapy, maintain suitable housing, and submit to drug testing.

As to appellant's argument regarding adoption not being an appropriate permanency plan because of the Lenzes' interest in obtaining guardianship, this case is not the proper place to deal with the issue. Alternatively, there was sufficient evidence before the circuit court to demonstrate that the grandparents would not have been an appropriate placement for D.R. *See Lenz v. Ark. Dep't of Health & Human Servs.*, CA06-862, slip op. (Ark. App. Apr. 4, 2007) (affirming the denial of Mrs. Lenz's motion to intervene and petition for guardianship).

We hold that the circuit court's decision to terminate appellant's parental rights was not clearly erroneous. The circuit court found termination to be in the child's best interest, and addressed the potential harm caused by returning the child to his mother. Contrary to appellant's argument, evidence was presented to support a finding that the return of the child to his mother's custody would be potentially harmful and multiple grounds for termination under Ark. Code Ann. § 9-27-341(b)(3)(B) were proven.

Affirmed.

BIRD and VAUGHT, JJ., agree.